86 - 1300

Supreme Court, U.S.
FILED
JAN 20 1987
JOSEPH F. SPANIOL, JR.
CLERK

In The Supreme Court
Of The United States.
October Term, 1986
No. _____

John E. Reardon

Plaintiff,

vs.

U.S.P.S., M.S.P.B.,
A.P.W.U. & D.O.L.

Defendants.

Appeal to the United States Supreme Court from a final order entered by a district court Judge who's ruling in effect totally voided and mooted a congressional statute — declared it to be unconstitutional - as against the rights of the federal defendants under other federal statutes and thus unenforceable and unbinding.

John E. Reardon
Oakridge Terrace
Apt. B-33
Runnemede, N.J. 08078
931-8640

48 pp

QUESTIONS PRESENTED FOR REVIEW

1) Does a party injured by an administrative ruling which in effect declares a Congressional statute as being unconstitutional and/or unenforceable and in contradiction to the legislative intent of congress have the right to challenge said ruling in an independent suit or must he appeal said decision when there are extraneous and possibly barring circumstances involved?

2) Can a union who knows a federal statute is binding on them and then aides and/or allows the employer to impliment and enforce a contract and internal regulatory scheme to deny certain handicapped individuals of their legally protected rights be sued for

A) Monetary damages,
B) Punative and or exemplary damages
C) Discrimination by way of conspiracy to aide the employer in so doing?

3) When a federal statute is in existance and all federal agencies involved know of its existance and binding effect and decline to enforce or accept jurisdiction over said statute, does an injured person have the right to sue to have one of the agencies be declared responsible over the law and for ensuring correction of the problems and future compliance thereof?

4) Can a local union, who by way of contractual agreement, be sued for failure to represent fairly when it is the party who fails to so do and has accepted the contractual method of representation at their level?

5) Can a federal employer be sued for monetary or exemplary damages to recover the monetary losses of parties injured as a result of the willfull and known violations of the congressional statute and the rights protected thereunder?

6) Does a pro-se party have a right to have his complaint amended at hearing when he indicates that such amendments

would have come if granted leave by the court to so do?

7) Does a person have the right to bring a class action EEO complaint into court when the agency has denied and/or prevented such complaint from being previously filed and for which Discrimination has and is occurring as a result of illegal regulations and contractual language which has been permitted by EEOC to be relied on to demonstrate a non-discriminatory animus for the actions of the employer especially when the individual has such a complaint before the court?

8) When a person has and continues to seek all administrative processes available to correct a problem and address violations of rights under federal statutes, does a court have the right to time bar a complaint when similar proceedings are still in process in other administrative agencies?

PARTIES TO SUIT

1) The U.S.P.S. by way of the following agents — a) Phillip Koehler and b) Milton Gore. The agents are located at the MSC in Bellmawr, N.J. 08031.

2) The American Postal Workers Union in Washington, D.C. and Bellmawr, N.J. by way of the agents Mr. Woodford and Mr. Golden located in Bellmawr, N.J.

3) The Merit Systems Protection Board in Philadelphia and Washington, D.C.

4) The Dept. of Labor in New York and Washington, D.C.

TABLE OF CONTENTS

Item — Pg.

1) Questions for Review
2) Parties to Suit
3) Table of Contents
4) Table of Citings
5) Nature of Proceedings
6) Judgement Below
7) Jurisdiction
8) Provisions Involved
9) Statement of Case
10) Statement of Facts
11) Importance of Questions
12) Conclusions
13) Certification of Mailing
14) Appendix A

TABLE OF CITINGS

Item	Pg.
1) PL 93-416	7, 11, 17, 18, 20, 23
2) Art. VI, Sec. 2 of the U.S. Constitution	5, 6, 7, 8, 14, 18, 20, 23
3) Rule 12 of the F.R.C.P.	11, 15, 16, 18, 24
4) 5 C.F.R. 353 & 5 U.S.C. 8151	5, 7, 9, 10, 11, 14, 15, 17, 18, 20, 21, 22, 23
5) 28 U.S.C. 1252	6, 24
6) 28 U.S.C. 2101(a)	6
7) 29 U.S.C. 185	5, 7, 11, 18, 23
8) 29 U.S.C. 791, et seq	5, 7
9) 42 U.S.C. 2000e	5, 7
10) DeCostello, 462 U.S. 151	18
11) Steelworkers v. Flowers, 451 U.S. 965	19
12) 51 LW @5030	18
13) Smith v. Wade, 51 LW @4414	17
14) U.S. v. Locke, Nev. 1985, 105 S.Ct. 1785	6
15) U.S. v. Barusmont, Cal. 1981, 101 S.Ct. 549	6
16) California v. Grace Breth. Church, Cal. 1982, 102 S.Ct. 2498	6
17) Butz v. Economou, 98 S.Ct. @2910	17
18) McLucas v. DeChamplain, D.C. 1975, 95 S.Ct. 1365	6
19) U.S. v. Christian Echos Nat. Min., Okl. 1972, 92 S.Ct. 663	6
20) Griffin v. Breckenridge, 91 S.Ct. @1794	22
21) Vacca v. Sipes, 87 S.Ct. @912	9, 14, 18
22) Thompson v. N.Y., 478 F.Supp. 212, 217	19
23) 439 F.Supp. @68	23
24) Goodwin v. Karnuth, N.Y. 1947, 74 F.Supp. 660	6, 10, 18
25) Complex Litigation, 90 F.R.D. 207	21
26) 28 U.S.C. 1332	7

NATURE OF PROCEEDINGS

This case involves a federal law suit brought under 29 U.S.C. 185, 42 U.S.C. 2000e, et seq the fair labor and standards act complaint, Art. VI-2 of the U.S. Constitution and 29 U.S.C. 791 et seq challenging the constitutionality of labor contracts, regulations, and other contracts which knowingly run contrary to the intent of 5 U.S.C. 8151 and the supporting regulations set out under 5 C.F.R. 353 et seq which were claimed by the plaintiff as the Supreme Law of the land, were binding and effective against the Postal Service and Union(s) and which guaranteed returning O.W.C.P. anuitants certain rights and benefits upon return to work to their previous employer. The complaint further came to challenge the right of all agencies who are in some way affected by 5 U.S.C. 8151 to deny jurisdiction over claims under the violations of this act and thus this suit was brought to attempt to address the wrongs, violations, losses and ensure future compliance with the regulations and that some agency be required to recognize its responsibility for complaints under the above cited statute.

The complaint further went on to cite unfair labor practices and representation in grievances by the local agent who has voluntarily agreed to comply — as well as by contract — with the terms of the contract to fairly represent its local members. Finally the case challenged discrimination and discriminatory intent by both the employer and union in its implimentation —and thus enforcement — of its labor contract at the negotiation level which is not addressable under the N.L.R.B., is not addressable by EEOC since it involves a joint union/management conspiracy to discriminate against handicapped not covered by the EEOC regulations, is not covered by the M.S.P.B. because it involves union activity and a determination of the legality of a contract which they have no jurisdiction over, and is not covered by Fair Labor and standards act because there is nothing to go on until it is decided as to the question of the legality of inter/agency contract, labor contracts and internal regulations which knowingly run contrary to the federal law —5 U.S.C. 8151 — and the rights protected thereunder and its binding effect on the employer and union.

JUDGEMENT BELOW

On Sept. 3, 1986 opinion was entered by Judge Brotman —U.S. District court of N.J. — in the above captioned case which held that there was no set of facts which the plaintiff could set out to grant any of the relief requested. The Plaintiff filed a motion of reconsideration and on Oct. 21, 1986, unknown to the plaintiff and without benefit of the record and docket before him, as it had already been marked closed and sent to Trenton, N.J. on Sept. 5, 1986, the motion was given to Judge Gerry who denied the plaintiffs motion under local R12-I which says the plaintiff must set out the matters and controlling cases the judge overlooked in a memorandum. While this was not done, the matters and cases were set out and Judge Gerry himself has ignored his own factual and justiciable findings under local rule 1 which says the rules may be relaxed when an injustice might occur. Thus the judges finding as well as Judge Brotmans are both willful obstructions of justice because they knowingly have ignored valid arguments and case law by suppressing them with relaxable procedures that they refuse to so relax for the plaintiff to ensure justice is served and done.

Jurisdiction

Jurisdiction for appeal comes by way of 28 U.S.C. 1252 — not 1253 which was mistakenly cited in the notice of appeal — along with such cases as U.S. v. Locke, Nev. 1985, 105 S.Ct. 1785; U.S. v. Barusmont, Cal. 1981, 101 S.Ct. 549; U.S. v. Christian Echos Nat. Ministry, Okl. 1972, 92 S.Ct. 663; California v. Grace Brethren Church, Cal. 1982, 102 S.Ct. 2498; McLucas v. DeChamplain, D.C. 1975, 95 S.Ct. 1365, Goodwin v. Karnuth, N.Y. 1947, 74 F.Supp. 660 and other cases cited under Art. VI-2 published with the text of Federal statutes which declare labor contracts that are inconsistant with the Supreme law of the land are null and void and must yield to the federal laws. The appeal is consistant and in order under 28 U.S.C. 2101(a) and rules 11.3 and 12 of the rules of the Supreme Court.

PROVISIONS INVOLVED

1) 29 U.S.C. 185
2) 29 U.S.C. 791, et seq
3) 42 U.S.C. 2000e et seq
4) Art. VI-2 of the U.S. Constitution
5) 28 U.S.C. 1332
6) 5 U.S.C. 8151
7) 5 C.F.R. 353, et seq
8) P.L. 93-416

STATEMENT OF THE CASE

In November 1982 the Appelant was restored to the Postal Service after having been on workmen's compensation for six years due to the fact the Postal Service, after repeated requests by the Appelant and the Dept. of Labor, terminated the Appelant claiming no work was available or could be found to accommodate the Appelant. Despite the fact the Appelant's physical condition had shown no improvement or change as determined by Dr. Brown — ordered by the Dept. of Labor — in 1978 and by Dr. Rizzo — ordered by the Dept. of Labor — in 1982, the Dept. of Labor and Postal Service now believed the Appelant was fit for light duty work in a modified position within the Postal Service that he had been denied back in 1978.

Upon returning to work, it seemed strange to the Appelant that he was not entitled to the benefits he would have gained had he not been terminated by the Postal Service to begin with. Upon inquiring into this problem and through his own investigative work, the Appelant discovered that none of the procedures were followed by the Postal Service in 1978 upon termination and in 1982 regarding restoration. The procedures lacking — according to 5 C.F.R. 353 et seq as ordered by congress under P.L. 93-416 in accordance with 5 U.S.C. 8151 —required the Postal Service upon termination to inform the Appelant of his rights to "Restoration and Appeal" under 5 C.F.R. 353 which was never done and the plaintiff was thus denied a hearing on the improper termination.

Upon restoration to duty, the Postal Service was again required to inform the Appelant of his rights of restoration, notice of the rights, rights regarding appeal and notice of the right to so appeal. The Postal Service again failed to comply with these mandates ordered by Congress. Thus, the legal mandates were required to be followed since the law is binding on the Postal Service and is the Supreme law of the land under Art. VI-2 of the U.S. Constitution and the "Due-Process" requirements were not complied with and thus Due Process was denied.

Immediately upon discovering his rights, the Appelant filed a grievance - which basically — challenged the legality of the contract and a complaint with the M.S.P.B. Not knowing that an EEO charge had to be raised with the M.S.P.B. as well on the same issue, the Appelant filed an EEO complaint which the EEO counselor accepted but claimed was untimely filed in violation of her admitted and known responsibility under EEOC regulations for such complaints. That is, the complaint was legally supposed to be rejected and the Appelant was to be informed to raise the issue with the M.S.P.B. Consequently, as a result of this lack of knowledge and foul up the two complaints went their separate ways.

Eventually, the M.S.P.B. refused to overturn the error of the local office and the Appelant did not bring the matter to court because the EEOC complaint was still in process and available. However, despite the fact the formal complaint charging discrimination being sent to the region office of EEO of the Postal Service, the regional office requested information from the Appelant which would show how the Appelant was being discriminated against as a result of the improper restoration. Un-beknownst to the Appelant, the Regional official — who is unknown — upon rejection of the complaint — transmitted papers to EEOC in Washington which apparently claimed the Appelant never filed a discrimination charge on his restoration and the EEOC so noted it in their ruling.

After reaching dead ends for resolution of the losses of the legally protected rights with the Postal Service, The Union(s), the M.S.P.B. and EEOC, the Appelant filed suit in Federal court to demand compensation for losses in wages,

seniority and other benefits the law provided for but were denied this Appelant and the entire class of Appelants.

The Appelant did not file a complaint with the N.L.R.B. because the requirements of such a complaint — set at Vacca v. Sipes — require proving a violation of the national labor/management contract. This was not the core or central issue and problem. The problem is that they — The Union and Management — were in fact complying with the agreement. The problem is that the agreement was illegal/unconstitutional — as complained of in the complaint —because it violated the dictates and mandates of 5 U.S.C. 8151 and 5 C.F.R. 353 et seq and for which all parties knew it so did and continued to permit the illegal contract to exist unchallenged and enforced to deny the legally protected rights of the beneficiaries of the act.

The Appelant charged a conspiracy - at the bargaining/contractual level - to discriminate against re-habs and thus permit the discriminatory animus to carry over in a covert way so as to protect the union from such EEO charges if brought at the representation level due to the EEOC lack of jurisdiction over said parties and thus allow the illegal deprivations of rights to occur and granting its approval to the Postal Service to so do.

The Appelant further charged unfair representation by the union at the local and national level, there was a charge of knowingly implementing and enforcing and permitting the implementation and enforcement of an illegal contract and regulations. There was a demonstration of fact that showed the Union did not want the re-habs back to the Postal Service because of the problems it created for them. (i.e. The unions refused to aide the re-habs with any problems they had — if we came to them with a rehab problem we were told its not in the contract and there was nothing they could do. If we approached them on a contractual matter we were told we were re-habs and again they could do nothing and yet when management began to show favoritism to the re-habs — as the union saw it — the union did not hesitate to file its own grievance which it took all the way to arbitration and then refused to fight for the rehabs for anything the arbitrated award would have granted them.)

The complaint further charged — as a class — the above allegations. The complaint further went on to charge the D.O.L. and the Postal Service as having implemented an internal contract which implied terms of re-employment under 5 U.S.C. 8151 which was not within the jurisdiction of the Secretary of Labor but was put under the jurisdiction of OPM (Office of Personnel management) and was thus contrary to the intent of a congressional act. Thus the D.O.L. was brought in as a defendant because of the contract which violates the dictates of a federal law. So to was the M.S.P.B. because it has adopted a policy that partially recovered employees have no appeals rights and that a person who has not improved can be considered a partially recovered as well as the fact they refuse to allow new issue to be heard which would grant them jurisdiction — especially if it might bring about a ruling that would alter the currently accepted rulings of administrative judges. These rulings are also in question as the judges of any court may not re-interpret the law once it has been interpreted by congress and/or the agency it has granted authority to so interpret.

Since the plaintiff is pro-se and, at the time, was not adequately familiar with "John-Doe" defendant procedures, he did not so name them. However, at argument in the court, the plaintiff — since he had already used his one amendment up —stipulated to the court that he was ready, willing and able to add all appropriate "John-Doe" defendants to correct technical deficiencies upon leave of the court and the court failed to so grant. The John Does are naturally the heads of each agency.

For relief, the Appelant sought in the neighborhood of about twenty items of which only three had anything to do with money. One request was naturally the declaration of the illegality of the contracts and the rights to go back to the agencies for proper proceedings. Both of these items were and are grantable. However, the court found that the Appelant(s) were not even entitled to that relief and the only way this could come about, due to rulings such as 74 F. Supp. 660 and this courts rulings therein, would be to find that the law has absolutely no force/effect and the Appelant is thus not entitled to his 1st amendment rights to petition the government for

redress of grievance. Thus the ruling, while not declaring the law for any similar case. Under R-12-B(6), it must be absolutely parties knew of its existance, its requirements and its binding effects and to say that a person who has been aggrieved under this law does not have first amendments rights would be to in effect declare the law totally void, in effective, unenforceable and of no import. To do this is to have declared the law totally unconstitutional or to have declared 29 U.S.C. 185 totally unconstitutional as a means of enforcing compliance with the law for any similar case. Under 4-12-B(6), it must be absolutely certain that there is no set of facts or theory upon which any relief may be granted especially with cases such as Ross v. Bernard, ____ S.Ct. ____

STATEMENT OF THE FACTS

1) Appelant alleged handicapped discrimination against all re-habs as to the denial of their legally protected rights under 5 U.S.C. 8151, 5 C.F.R. 353, et seq and denial of the equal protections under the labor/management contract.

2) Appelant alleged that the union, management and Dept. of Labor implemented contracts and regulations which were knowingly in contradiction to the mandates of 5 U.S.C. 8151 5 C.F.R. 353 et seq and PL 93-416 and enforced said regulations and contracts in order to deny the re-habs their legally protected rights.

3) Appelant alleged conspiracy to knowingly implement and enforce an illegal contract with a discriminatory intent to save themselves time, money and aggrevation over the problems that would certainly develop if the re-habs were granted rights under the law and thus placing them ahead of workers who had continued to work.

4) Appelant alleged denial of rights to file grievances — legitimate — by the local union.

5) Appelant alleged a failure on the part of all appropriate agencies — i.e. Dept. of Labor, M.S.P.B., Union, and management to accept jurisdiction over the problems and address the unlawful violations and denials of the rights Congress man-

dated under the above cited statutes.

6) Appelant alleged denial of the equal protection of the laws and denial of due process .

7) The court found the federal agencies and officials are not required to provide or grant parties item #6.

8) Appelant alleged the refusal of the M.S.P.B. to answer all issues legally addressable before them and refused them to be addressed and thus "Rigged" the decision made by them.

9) Appelant pointed out that the Postal Service failed to properly handle an individual EEO Complaint which was filed simultaneously with them over the improper restoration to duty and with the M.S.P.B.

10) The Appelant never appealed the M.S.P.B. decision because it was his belief that as long as the EEO Complaint — which was later discovered to be improperly handled and the court now refuses to address this problem — that the Appelant could raise this issue later and did not lose this due to the dual jurisdiction problem of the complaint. (i.e. if the M.S.P.B. decision were to have been filed, the EEO and the federal court would then be in conflict because the same issue would be before both, this is also supported by process for same problem to two different agencies.)

11) The court has refused to abide by the laws that were pointed out to it regarding the filing of a motion to dismiss on the pleadings before all answers were in.

12) The court has failed to abide by the case law which required the judge to rule favorably for the Appelant on all aspects, facts, material etc. and the requirement which required the judge to review the file as far its jurisdiction is concerned before making such a decision and for which the judge accepted the statement of an EEOC officer in Washington, rather than the actual record which shows that a certain EEO complaint and issue was in fact filed.

13) The Appelant alleged the re-habs were co-erced into returning to work, (i.e. if we refused to accept a job we had been previously denied years before, that the Dept. of Labor would terminate our benefits and we would be without income and a job) and this was made in light of the allegations reference to the Social Security complaint regarding the failure on the part

of the government to prove any change/physical improvement over the condition from time of termination to time of rehire.

14) The Appelant alleged misrepresentation of rights of appeals at time of termination by the Postal Service and that the re-habs, who did appeal, appealed the wrong issue and were thus denied their right to appeal to the M.S.P.B. over the Postal Services having denied the re-habs their rights to restoration in accordance with the laws cited in #2.

15) Appelant set out, in his briefs in opposition to dismissal, a factually founded and supported scinario which shows the plaintiffs had no other place to turn for the redress of their grievance but the courts and the courts have denied the "People" their right to so petition.

16) The Appelant alleged — indirectly — arbitrary and capricious conduct on the part of the Postal Service and unions.

17) Appelant pointed out arbitrary and capricious conduct on the part of the M.S.P.B. in that in 1977 they declared the Postal Service had the right to terminate an employee who was no longer fit for his duties and that in 1983 they now found that it was O.K. for the Postal Service to rehire that same unfit worker.

18) The Postal Service and Dept. of Labor has implemented a contract with specific terms regarding restoration and that it has been violated and neither agency wishes to rectify, address or enforce the violations and contract.

19) The Appelant requested — at the hearing — by order of the court, leave to amend the complaint to include "John Does" and that request was obviously denied.

20) The D.O.L./P.S. contract required placement into positions where the re-habs could compete against their fellow non-disabled workers which has not happened and was alleged so by the refusal of management to use re-habs in positions or train them in positions or even grant them the right to bid on positions. (The contract says "selectively place them in positions which enables them to compete against their fellow non-disabled employees" and not "place them into positions which enables them to selectively compete against their fellow non-disabled employees". This second phrase has been the

interpretation of the first by the Postal Service.)

21) The Postal Service knowingly implemented regulations in contradiction to the laws and their responsibility thereto.

22) Appelant alleged breach of contract and failure to fairly represent in accordance with this courts decision in Vacca v. Sipes, 87 S.Ct. @912 which required said allegations to be made whether suing the union or management singly or jointly.

23) Despite Appelant pointing out that the allegation of suing both the employer and union was never his intent at the time, the judge then turned around and in his order of dismissal stated that that is what it is.

24) Appelant pointed out that this is a hybrid case because it involves an ongoing problem for a class that is continuing to grow in size.

25) The courts refused to address the Appelants' motion for injunction and verification of class and thus denied the class of its due process rights to correct problems which were correctable. (i.e. the six month statute of limitation would not be controlling if one of the class members joined the complaint that was hired within the last six months.)

26) The charge of compensatory damages in the first count of the complaint was not directed to government agencies or the union and the courts have found that compensatory damages can be awarded against unions for conduct which exceeds charges of unfair representation. (i.e. known and willful violations of the laws, implementation and enforcement of a contract they knew was illegal and unenforceable and their absolute refusal and failure to act at any point in time to rectify and correct this problem.)

27) The Appelant filed a motion of reconsideration charging the judge as having declared 5 U.S.C. 8151 unconstitutional.

28) Neither the judge — who heard the motion, Judge Gerry — or the defendants stated that the order did not so declare 5 U.S.C. 8151 unconstitutional.

29) The Appelant also pointed out that by allowing a labor/management contract and a P.S./D.O.L. contract to supercede 5 U.S.C. 8151 in violation of Art. VI-2 of the U.S. Constitution, the ruling amounted to the unconstitutional ruling of voiding the separation of power as well as having

declared that congress has no power to make laws, interpret them, and hold a federal agency bound by said law in violation of Congresses right under the U.S. Constitution and thus holding unconstitutional the above act by claiming congresses right to so do is unconstitutional and thus declaring totally unconstitutional 5 U.S.C. 8151.

30) An act that has been found to violate some constitutional mandate or privilege or right by or against a party is an act that is in fact unconstitutional regardless of whether the judges opinion is correct, as that is precisely the purpose of appeals under such circumstances. (i.e. whether the judge is in fact right).

31) Judge can not, nor parties can not, claim the government is immune because agents of the government have been named as the actors of the agency and the question of liability under R12-b(6) is not whether the agents are the proper parties to be named but whether or not agents have in fact been named for corrective purposes in complex cases through discovery proceedings.

IMPORTANCE OF QUESTIONS

1) The question at first glance seems vague and already well established by law. However, an in depth analysis will reveal a very serious problem of justice if the ruling by the lower court were to be left as is. The administrative processes for appeals for restoration to duty were unknown to the Appelant and he followed the courses he knew existed. He did not know, however, that a complaint to EEO and the M.S.P.B. on the same issue had to be raised with the M.S.P.B. together. In fact, this was the responsibility of the EEO personnel to so inform the Appelant and this was not done. Instead the EEO let this complaint run a separate and independent course in contradiction to the persons known knowledge of the administrative procedures.

By the above action, we then had a situation where the M.S.P.B. was and had entered its findings long before the EEOC had entered its decision. Thus, for the plaintiff/appelant to

appeal the M.S.P.B. decision would then be a problem because there would be a situation of dual jurisdiction over the same issue. (i.e. an appeal before the court and an appeal before the EEOC in Washington, D.C.) Clearly this would be a significant problem and question which would automatically declare null and void any time limit for appeal or otherwise, due to the circumstances involved. Instead the courts have found this factor to be insignificant and dismissed the case. But this is not the significant factor. The significant factor is the manor in which the judge arrived at this conclusion. The judge has and continues to ignore the criteria for pro-se individuals and has failed to do his job properly as to ensuring it does or does not have jurisdiction over a matter. This has come about by the fact that the Appelant filed an EEO complaint on his restoration to duty and the EEO personnel in the Postal Service apparently changed the formal complaint to something else and Washington EEOC then claimed that such a complaint was never filed despite the formal complaint having been submitted shows exactly that.

The importance of this question then goes to ask where does a person go to seek relief from an order that problems have been created by fraudulent activity, falsification of records, failure to carry out the duties of their position and appeal something that was supposed to be in two different jurisdictions by the fact the formal complaint did in fact make a certain change. What we see is the judge actually settling controversies as he has always done at the R12-B(6) stage which is not permissable. The fact that the evidence shows something contrary to the statement of an official does not allow a judge to change and alter the intent and practice of the law. Thus we question the very integrity of a system and what is justice if the problems described above can be permitted to be maintained in order to deprive a person of his legal and constitutional rights. Art. I of the U.S. Constitution states that the Congress may not enact any law respecting the right of the people to petition the government for redress of grievance. Where a party seeks to use that avenue and the personnel prevent, block or deny that access or the personnel refuse to accept responsibility to address the issues under the laws, then

the "Peoples" right to petition the government can not be denied by the improper and illegal misconduct of the parties involved and there must be a right to file suit or the entire constitution is unconstitutional because this is one of the very founding reasons why we fought for our independence from England and implemented the constitution to begin with. Aside from this, the fact still remains that administrative procedures are in fact statutes respecting the right of the "People" to petition the government for redress of grievances and in fact are totally unconstitutional to begin with and the courts are not supposed to uphold such laws. The importance of this question does not throw away the laws, it simply says that any statute that directs the manner in which a person may petition for redress of grievance is unconstitutional and can not be enforced by the courts. Thus to throw a case out on the claim made by the court is to uphold an unconstitutional law and allow willful injury and injustice to abound in order to rid itself of cases the court may not like. Justice must always prevail and be the central focus of all decisions and not just the existance of a law.

2) The question here goes to ask why is a union immunized from misconduct. The case law history clearly shows that compensatory damages can not be awarded for mere failure to properly represent its members. But this case goes beyond that. This case involves a union who knowingly implemented or permitted to be implemented a contract and Postal Service regulations, reacheable through the contract, in contradiction to PL 93-416 and 5 U.S.C. 8151. But more importantly they permitted the enforcement of these items and even demonstrated that it would not hesitate to file a grievance and take it all the way to arbitration if the Postal Service granted the re-habs the rights they were entitled to under the federal laws.

The Appalent is fully aware of this courts rulings as to why it grants insular protection to unions for certain types of damages. However, this protection, if offered here, would be to say that all unions now have a license to go out and break any law — labor — it wishes to deliberately and knowingly deny rights and benefits to certain groups of individuals who are protected by other federal laws and there is nothing they can

do about the problem. Unions were created to serve, protect and defend its members equally. This is not the case here. This union has shown a total disregard for the law and legally protected rights of the class known as the re-habs. The protection mentioned was to protect the union so that it could do its job and not be unnecessarily burdened in that respect by large awards which would or could severely restrict its function. However, here the union has willfully refused to do its job that this protection was granted for. The Appelant would argue that the criteria this court set in the case of Butz v. Economou, 98 S.Ct. @2910 be held applicable here because the union has willfully placed its impunity at defiance with the law and an example should be made of them to unions across the country who chose to follow in this unions footsteps in accordance with this courts findings in Smith v. Wade, 51 LW @4414. To deny this law suit on traditional grounds as is being claimed would be to give a license to all unions to violate any labor law it wishes to, through negotiations or otherwise in order to deny legally protected rights that are required to be provided simply because they or the rest of their members don't agree with the laws. To do this would be to reduce our administrative system to a system of men and not of laws for which we boast. (see Justice Blackman, 51 LW @5030) and to allow the courts, who are to ensure justice is carried out and enforced, to also reduce it to a system of men. There is no question as to their culpability, the only question is to their liability and to protect a union who has totally ignored and violated the laws and denied the rights of people protected by those laws would be the biggest travesty and miscarriage of justice that could exist. Without the responsibility of the union to be liable for this illegal conduct would be to void the U.S. Constitution and its whole intent. The "People" must be provided with a right to petition the government for redress of grievance and to be compensated for the losses they incur because of willful misconduct.

This case, while so equated, can not be equated to the DeCostello decision because it involved problems at the Negotiation level in accordance with Vacca v. Sipes, 87 S.Ct. @912, it did not involve an arbitration finding and the fact that there

was a charge under Art. VI-2 charging 5 U.S.C. 8151, PL 93-416, and 5 C.F.R. 353, et seq as the supreme law of the land binding on — and admitted to — both the union and management, declares the contract and other regulations illegal and unconstitutional in accordance with 74 F. Supp. 660. Thus the further importance of this question is that "the People" are being denied their right to petition the wrongs illegally committed against them by permitting the illegal contract and regulation to be enforced and thus supercede the Supreme law of the land and in order to do this, even by declaring a dismissal under R12-B(6) is to have declared, without directly so doing, 5 U.S.C. 8151, PL 93-416 and 5 C.F.R. 353, et seq, as being totally unconstitutional, null, void, ineffective, un-enforceable of no consequence and of no import as against a union and an employer who have already admitted to its binding effect on them. It also declares unconstitutional, as applied, 29 U.S.C. 185 with regards to the rights of the "People" to recover losses incurred by unions and/or employers due to illegal and/or unconstitutional contracts and regulations, and thus deny them their first amendment rights.

The most significant consequence of this case, however, is that to let this case be dismissed and unanswered or answerable would be to declare that Congress does not have a right to pass laws and so interpret or place interpretations on those laws. Thus the court — lower — has declared it has the sole right to enforce or change a law at whim. This may be, but to so do would require — at minimum — the implication that a law is in part unconstitutional. This was done here since the laws cited above specifically spelled out what the required steps for procedural due process were, the claim was that it was the supreme law of the land, that it was binding on the parties and the parties admitted to this effect, but failed to comply with the required steps spelled out in the law for due process and the judge found — under traditional rulings and standards — due process had not been violated. Thus, the law had been declared unconstitutional again in part as to the requirements for due process and that they did not have to be complied with.

4) The importance of this question goes to the issue of tort feasors and the fact that the contractual scheme requires that

grievances be filed at the local level and the locals have accepted this responsibility willingly. This then brings into play the type of "special trust" established in the case of Thompson v. N.Y. 478 F.Supp. 212, 217 and is somewhat similar and consistant with the case of Steelworkers v. Flowers, 451 U.S. 965 which treated the local and the national as one defendant. If the local can not be held accountable for its misconduct which results in dismissals or adverse rulings to its members, how can the national be held accountable for the conduct of its local officers who have committed the tort. How can a national be expected to know everything its local does wrong? If a local refuses to process a complaint, the contract says that there is no right of the person to proceed on his own which then asks if the grievance were legitimate, how could a national be held liable for something it knew absolutely nothing about? Thus, the importance of this question goes to the very legality of tort feasors because the ruling has declared that a local who has been instrumental in the denial of fair representation and rights under the labor contract can not be liable thus mooting tort feasor claims and acts.

5) The importance of this question is very simple. The court has declared that an employer, even though it is the federal government, can not be held liable for the damages its officers cause to its employees as a result of willful violations of the law. All employment contracts with the government include a provision that they are bound to and agree to uphold the Constitution and laws of the United States. Here the officers have willfully placed their impunity at defiance with the laws by enforcing its own regulations the officers knew to be in violation with PL 93-416, 5 U.S.C. 8151 and 5 C.F.R. 353, et seq, the Supreme law of the land. But more importantly they violated said laws when they knew the laws were binding and effective against them. The government has always been recognized to be responsible for acts or omissions of its officers which injure the "People" or its employees. The fact that the Appelant is a Postal Service employee does not remove his right to sue for damages because my oath is also to uphold the constitution. Thus, to say that an employee may not sue to recover losses for injuries created upon him by the employers failure to uphold

the Constitution — Art. VI-2 — Says that an employee may not then uphold the constitution or its intent and thus the contractural obligation to so uphold is mooted and the contract is broken because the terms can not be upheld and thus the employee would then be permitted to sue anyway because the impediment that was claimed to exist can not exist because of the contradictory position. This involves the very basic and fundamental right of the "People" to petition the government for redress of grievance without Congress dictating how it may be addressed. (Art. I)

However, even if the government is not liable for the misconduct of its officers, then the officers would have to be liable because the primary duty of any officer is stated by his oath of office. Thus, where any officer of the United States or of any state fails to uphold the Supreme law of the land, he acts on his own volition and without the authority he pretends to have and thus is liable himself because he has commited an act that is not authorized by the government or his duties thereunder. Since the plaintiff cited two officers of the Postal Service within the pleadings — the judge limited them to the nominal pleadings in contradiction to this courts decision in other cases — then the case is not dismissable because the private litigants named would be liable for their own conduct.

6) The question here is very simple. The plaintiff/appelant — who is pro-se — sought permission of the court, if so ordered as required by the rules, leave to amend the complaint to include the statement "any John Doe which might be appropriate to the suit". The districts own local R1 says that the rules of court shall be relaxed if an injustice would occur if they were not so relaxed. Thus, the fact that the plaintiff did not include the heads of the agencies involved and the fact that the statement they permitted the passing of and enforcing of regulations, contracts, etc. which were in known violation of the intent of the Congressional act, 5 U.S.C. 8151, the court concluded erroneously there were no set of fact for which to grant relief. The Appelant intended to correct these deficiencies through discovery, pointed out the case law for complex litigation for discovery, 90 F.R.D. 207 and the case law which says a judge is not supposed to accept and decide any motion

for dismissal for cases where they are filed before answers are made by all parties and in the complex case before discovery is completed. This however, did not matter, as they did not want this case even going to discovery and thus not only was justice denied, but it was willfully obstructed.

7) The importance of this question goes to the very heart and sole of justice. The Appelant and 4 other members of the area class attempted to file an EEOC complaint and the complaint was willfully mishandled by the EEO counselor. But more importantly, the Appelant filed and allowed to run an EEO complaint that indirectly dealt with the problem of the class and the Postal Service relied on the illegal regulations to demonstrate a non-discriminatory basis for its actions and because the EEOC officer stated it had no jurisdiction to determine the legality of the regulations, it permitted the arguments and relied on them to find the Postal Service not guilty of discrimination. Thus, what happens and where does an employee turn to have a legitimate EEO complaint processed when the discrimination is occuring as a result of illegal and unconstitutional regulations which are being permitted to deny the equal protection of the laws. EEOC has indicated it could not address the problem and now the court has said that it can not address the problem because such a complaint had not been processed through EEO first. All administrative laws have what is known as a futility factor, and this is precisely one of those cases. EEOC has already indicated it could not find discrimination because it can not interpret the law — and rightly so — and the court is saying we must process something to an agency that has no authority to hear the matter the way in which the Appelant brought the case to court. That is to say that discrimination has occured by the Postal Service willfully manipulating its own laws and rights thereunder to avoid responsibility to and deny rights it was required to provide under 5 U.S.C. 8151 and thus discriminated against the class with illegal regulations in accordance with Griffin v. Breckenridge, 91 S.Ct. @1794. Thus the only proper place to hear such a complaint — since the attempt to so file earlier was knowingly improperly prevented — is through the courts. Thus the courts have found that frauds, falsifications of records, denial

of rights which are legally protected and guaranteed, improper and illegal conduct, illegal and unconstitutional regulations and perjured testimony by government officials must be permitted to stand because the Appelant has not filed a "fultie" grievance with EEO. Thus, justice must give way to corruption.

8) The question here is a matter of simple rights. When a person seeks one avenue after another to completely exhaust all possible administrative remedies, how can a court then claim that any statute of limitation has run when to proceed on each after their administative end would create more confusion than the complaint was complained to present. Just imagine the Appelant bringing the M.S.P.B. complaint into court in Dec. 1984 — or there-abouts — the grievance in May 1985, the first EEOC matter in Nov. 1985, and the second EEOC complaint in Dec. 1985 and the law suit also in Dec. 1985. And all issues deal directly or indirectly with the same issues and this court has now concluded that the Appelant has lost his rights because he has not proceeded as just described. Common sense under law dictates that it does not make sense and can not exist where there is going to be jurisdiction over the same issues in two or more locations. The court has found that the administrative processes should be exhausted and the Appelant is now being punished for having so exhausted them, especially when the screw ups that occured were not due to his fault but rather the fault of the officers who are supposed to know and enforce the laws. Had the plaintiff moved in the fashion just described we would have jurisdiction over the same issues at the following places:

A) The U.S. District court an appeal from the M.S.P.B. (or court of appeals whichever is appropriate.)

B) The EEOC in Washington, D.C.

C) The labor union and Postal Service and

D) The EEOC here in Philadelphia.

The Appelant hardly believes that this would or could be acceptable anywhere. Aside from that, at the same time the Appelant would or could have proceeded on the grievance to the district court under 29 U.S.C. 185 and thus we would end up with a conflict of court jurisdictions over the same issues and subject. The Appelant pointed out to the court that its own

court of appeals found at 439 F.Supp. @68 that errors commited by a person who is not knowledgeable of the beaurocratic maze work because he is not informed or is misinformed are not to be held against him as long as he has proceeded in a forthright manner. Despite this, the errors and bungles commited by the very people who are supposed to know the law have been held against and accountable to the Appelant for dismissal purposes. Where is the justice in this as to statutes of limitation. Again, to dismiss the case would be to give a license to federal officers to willfully violate the laws without fear of retribution, or consequence therefore.

CONCLUSIONS

Therefore, the court has, by its ruling, declared 5 U.S.C. 8151, PL 93-416 and 5 C.F.R. totally unconstitutional and unenforceable. It has declared, as applied, 29 U.S.C. 185 Unconstitutional and of no authority for enforcement of legally protected rights granted by Congress under congressional act and Protected by Art. VI-2 of the U.S. constitution even though they were binding on and against the Postal Service and the Union.

The court has further found by its ruling that willful violations of laws to deny the equal protection of those laws and the required due process rights of those laws are non-existant and unenforceable against government officials or agencies because they are not state actors, even though the XIVth amendment was never cited, and that the U.S. Congress has no authority to make laws or set up agencies to interpret its laws as it so direct and thus has set the district court up as an absolute higher authority than congress to accept or reject a law at will without first actually and openly declaring or finding the law unconstitutional and has thus reduced our government to one of men rather than of laws for which we boast. The Appelant has more than amply stated facts sufficient to surpass and withstand a R12-B(6) dismissal but not for this judge. In fact, the judge recently recused himself from the plaintiffs other cases on his own without motion to so do which should tell this court something of what is going on.

Lastly, the Appelant points out that in his motion of reconsideration below, the Appelant had stated that the judges decision had in fact declared these laws unconstitutional and the defendants response was simply, it doesn't matter. Thus they have admitted to the effect of the judges ruling and this court in fact has jurisdiction under 28 U.S.C. 1252. The judge who entered the order on the aforementioned motion simply stated the Appelant had not met his requirements of proof because he had failed to comply with local rule 12-I which requires a separate memorandum.

I hereby certify under penalty of perjury that all factual statements are true and accurate to the best of my knowledge.

Dated: 01-15-87

John E. Reardon

John E. Reardon, Appelant

CERTIFICATION OF MAILING

John E. Reardon	:	
Plaintiff/appelant	:	Case No.
v.	:	
U.S.P.S., A.P.W.U. M.S.P.B. & D.O.L.	:	Certification of Mailing
Defendants/respondants	:	

I hereby certify under penalty of perjury that a copy of the appeal booklet has been sent to the parties or their counsels as named herein.

Dated: 01-15-87

John E. Reardon

John E. Reardon, Appelant

APPENDIX

NOT FOR PUBLICATION

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JOHN E. REARDON Plaintiff, vs. AMERICAN POSTAL WORKERS UNION, Defendant.	:	Civil No. 85-5881 (SSB)
JOHN E. REARDON, Plaintiff, vs. UNITED STATES POSTAL SERVICE, Defendant.	:	Civil No. 85-5882 (SSB)
JOHN E. REARDON, Plaintiff, vs. U.S. POSTAL SERVICE, et al., Defendants.	:	Civil No. 85-5883 (SSB)

OPINION

APPEARANCES:

MR. JOHN E. REARDON
8 Winding Way
Gibbsboro, New Jersey 08026
(Plaintiff, Pro Se)

KIRSCHNER, WALTERS & WILLIG
BY: Sidney H. Lehmann, Esquire
194 South Broad Street
Trenton, New Jersey 08608
-and-
O'DONNELL, SCHWARTZ & ANDERSON
BY: SUSAN L. CATLER, ESQUIRE
1400 Eye Street, N.W.
Suite 200
Washington, D.C. 20005
(Attorney for Defendant American Postal Workers Union; Thomas Woodford; A.P.W.U.; Local A.P.W.U.; Gerry Golden; Clerk Craft President)

THOMAS W. GREELISH, U.S. ATTORNEY
BY: PAUL A. BLAINE, ASSISTANT U.S. ATTORNEY
402 East State Street, Room 265
Trenton, New Jersey 08608
-and-
BRUCE JOEL JACOBSOHN, ESQUIRE
Senior Asst. Regional Labor Counsel
Office of Labor Law
U.S. Postal Service
P.O. Box 8601, Rm. 907
1845 Walnut Street
Philadelphia, PA 19197-0170
(Attorney for Defendant United States Postal Service, Merit Systems Protection Board, U.S. Department of Labor)

BROTMAN, District Judge:

Plaintiff John E. Reardon has brought a series of three **pro se** actions which allege constitutional and statutory violations by defendants during the course of Reardon's employment with the United States Postal Service ("Postal Service"). The first action, Civil No. 85-5881, is brought pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, **et seq.**, against the American Postal Workers Union ("APWU" or "the union"). The second case, Civil No. 85-5882, is also a Title VII action and the sole defendant is the Postal Service. Plaintiff's final suit, Civil No. 85-5883, contains claims arising under Title VII, the federal Constitution, and the Rehabilitation Act of 1973 among others. The defendants in that action are the Postal Service, the Merit Systems Protection Board, the United States Department of Labor, the APWU, the APWU's South Jersey Local, the Clerk Craft of the Local, Thomas Woodford, and Gerry Golden.

Presently before the court are motions by all defendants to dismiss the complaints against them. In Civil No. 85-5883, the federal government defendants have moved in the alternative for summary judgment. Plaintiff has also made a motion to certify a class in all three actions. The court heard oral argument on the motions in Civil Nos. 85-5881 and 85-5882 on May 2, 1986 and those in Civil No. 85-5883 on June 20, 1986.

Based on the submissions and arguments of the parties the court finds that a full dismissal is warranted in all three actions. As a result the court determines that plaintiff's class certification motion is moot.

I. ***Reardon v. American Postal Workers Union, Civil No. 85-5881***

A. Factual Background

Plaintiff alleges in this action that the APWU failed "to provide equal protection under the Labor/Management Contract due to physical handicap and retaliation." Complaint at P9. He began this alleged Title VII action in June 1983, however, when he first contacted an Equal Employment Opportunity ("EEO") counselor at the Postal Service and charged that the APWU "had acted in a 'arbitrary and capricious manner' towards him due to his handicap." **Reardon v.**

U.S. Postal Service, Decision of U.S. Equal Employment Opportunity Commission, Appeal No. 01860152 (November 19, 1985) ("EEOC Decision No. 1") at 1. Plaintiff then filed a complaint with the Postal Service against the APWU and the Postal Service on July 14, 1983.[1]

On September 26, 1983, the Postal Service rejected plaintiff's claim against the APWU because the union was not an "agency" as defined by EEOC Regulations and therefore an inappropriate party to sue under the approach taken by Reardon. **Id.** at 2. Plaintiff next went to the EEOC and appealed the Postal Service's refusal to process his claims against the APWU. The EEOC affirmed the Postal Service decision on November 19, 1985 and plaintiff filed this action on December 19, 1985.

B. **Discussion of Motion to Dismiss**

Plaintiff attempted to pursue his Title VII allegations against the union through the Postal Service rather than directly through the EEOC. This was the basis upon which the Postal Service rejected plaintiff's complaints and the EEOC affirmed the agency. It is also the foundation for the APWU's motion to dismiss.

Title VII proscribes employment discrimination on account of race, color, religion, sex and national origin. 42 U.S.C. § 2000 **et seq.** The Rehabilitation Act of 1973, 29 U.S.C. § 791 **et seq.**, also prohibits discrimination on account of physical or mental handicap. Although plaintiff has couched this action as a Title VII claim, it does not involve any of the enumerated protections of Title VII, but rather addressed the anti-handicap discrimination protection of the Rehabilitation Act.

---

[1]/ The allegations contained in the complaint were as follows: (1) the Union failed to "vigorously pursue" a grievance Reardon filed against the Postal Service; (2) the Union had refused to file additional grievances on Reardon's behalf for alleged Postal Service violations of a collective bargaining agreement; (3) the Union informed plaintiff that he would never be able to transfer to full-time employee status because of his disability; (4) the Union permitted the Postal Service to discriminatorily favor three members of a class of complainants against the Postal Service; and (5) the general attitude of the Union discriminated in favor of "regular employees" and against "rehabs," those employees re-hired under the Postal Service's Rehabilitation Program. See EEOC Decision No. 1 at 2.

Under Title VII, a federal employee may bring a discrimination claim against his union, providing that he follows the proper administrative procedures through the EEOC. 42 U.S.C. § 2000e-2(c); **Jennings v. American Postal Workers Union**, 672 F.2d 712, 715 (8th Cir. 1982).[2] The Rehabilitation Act, however, does not provide for any federal cause of action against a union. The provision of Title VII, 42 U.S.C. § 2000e-2(c), which specifically precludes race and sex discrimination by unions, has no equivalent counterpart in the Rehabilitation Act. The section of the Rehabilitation Act which brings within that Act the rights and remedies available under Title VII is limited to those provided in § 2000e-16 of Title VII. 29 U.S.C. § 794a(a)(1); **Boyd v. United States Postal Service**, 752 F.2d 410, 412 (9th Cir. 1985).[3] Because a union is not a proper defendant under 42 U.S.C. § 2000e-16, the Rehabilitation Act cannot be the basis for a cause of action against a union either. **See e.g., Newbold v. United States Postal Service**, 614 F.2d 46, 47 (5th Cir. 1980) (APWU found an improper defendant under Title VII sections applicable to federal employees); **see also United States Department of Transportation v. Paralyzed Veterans of American**, ____ U.S. ____, 54 U.S.L.W. 4854 (June 27, 1986) (29 U.S.C. § 794a(a)(2) requires defendant to

---

[2]/ Section 2000e-2(c) of Title 32 provides, in relevant part:

(c) It shall be an unlawful employment practice for a labor organization -

(1) to exclude or expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex or national origin . . .

[3]/ Section 794(a)(1) of Title 29, United States Code, reads:

The remedies, procedures, and rights set forth in section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), including the application of sections 706(f) through 706(k) (42 U.S.C. 2000e-5(f) through (k)), shall be available, with respect to any complaint under section 791 of this title, to any employee or applicant for employment aggrieved by the final disposition of such complaint, or by the failure to take final action on such complaint. In fashioning an equitable or affirmative action remedy under such section, a court may take into account the reasonableness of the cost of any necessary work place accommodation, and the availability of alternatives therefor or other appropriate relief in order to achieve an equitable and appropriate remedy.

"receive" federal funds and thus limits applicable defendants).

In the proceedings before the EEOC, the Commission never reached the merits of plaintiff's claim against the union, instead dismissing the complaint due to his failure to file it directly with the EEOC rather than with the Postal Service as he did. See EEOC Opinion No. 1 at 3-4. Despite the technical focus of the EEOC's decision, this court must address plaintiff's complaint at a more fundamental level. To the extent that plaintiff has a grievance with the APWU concerning handicap-based discrimination, this is not a proper Title VII action. Furthermore, the Rehabilitation Act provides no direct private cause of action against a union for this type of discrimination.[4] Consequently, this court lacks subject matter jurisdiction over Reardon's suit against the APWU, Civil No. 85-5881, and the court will dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(1).

II. ***Reardon v. United States Postal Service, Civil No. 85-5882***

Reardon's second action is a direct charge of handicap-based discrimination against the Postal Service. Specifically, he alleges that the Postal Service: "Disparately appl[ied] the Federal regulations for restoration of injured workers which thus discriminated against me due to the improper restoration and the subsequent treatment therefrom." Complaint at 2. Plaintiff has pursued this claim through the EEOC and now comes before this court. Defendant argues, however, that plaintiff has not fully exhausted his administrative remedies

---

[4]/ The EEOC did not directly address the issue, and merely noted that it was "unclear whether the complainant could file his charge against the union for handicap discrimination with the EEOC. EEOC Opinion No. 1 at 3 n.4. This court has now conclusively addressed this issue. The court notes in passing, however, that it also agrees with the EEOC's conclusion on the more technical issue it did address. The EEOC regulations which require a complainant to go before this agency with a complaint only apply to claims directly against the agency, not those against his union. **See e.g.**, 29 C.F.R. § 1613.709; **see also** 20 C.F.R. §§ 1613.213-18; **Newbold v. United States Postal Service, supra**. For complaints against a union under Title VII a complainant must file directly with the EEOC before coming to federal court. **See e.g., Waiters v. Parsons**, 729 F.2d 233 (ed Cir. 1984); **Dickey v. Greene**, 710 F.2d 1003, 1005 (4th Cir. 1983).

and on this basis seeks a dismissal of the complaint pursuant to Fed. R. Cif. P. 12(b)(6).

A. **Factual Background**[5]

Reardon initiated informal administrative proceedings against the Postal Service by complaining to an EEO counselor at the Service on May 17, 1983. He alleged that on April 22, 1983 he was "improperly restored as a rehabilitated employee" and that "**as a result of** the improper restoration, his work schedule has changed, causing bad working conditions and harassment towards him as a rehabilitated employee" (emphasis added). Plaintiff subsequently filed a formal complaint with the agency in which he delineated six instances of alleged discrimination by the Service, but did not specifically allege that the restoration itself was discriminatory.[6]

The Postal Service rendered its final decision on Reardon's complaint on September 26, 1983. The agency made two findings. First, it held that the general claim that plaintiff's restoration was itself discriminatory was not timely filed because plaintiff was restored on November 17, 1982, well over 30 days before he contacted on EEO counselor. Second, it found that plaintiff has not exhausted his administrative remedies with regard to the six specific allegations of ongoing discrimination because he never brought these incidents to the attention of the EEO counselor. The agency made no determination on the merits of the six alleged discriminatory actions, but ruled instead that plaintiff must seek EEO counseling before proceeding further with his complaint about them.

---

[5]/ The background for this case is largely based on the account in **Reardon v. United States Postal Service**, EEOC Appeal No. 01840075, November 19, 1985 (hereunder "EEOC Decision No. 2").

[6]/ Plaintiff's "formal" complaint alleged: a refusal to "recognize" his handicap by granting him flexible work hours; no opportunity for advancement; harassment through a switch from day to night duty; statements by management and the union "that they do not want him"; failure to place handicapped persons in "residual" positions; and failure to convert him to full-time work status. EEOC Opinion No. 2 at 2.

Plaintiff appealed the Postal Service's decision to the EEOC on October 11, 1983. The Commission waited two years before issuing its opinion, then affirmed the Service's decision with regard to the six specific allegations of discrimination. The Commission also ruled that the Service did not have to reach the question concerning plaintiff's restoration itself because this was not contained within plaintiff's "formal complaint." The EEOC made no adjudication of any of the merits of plaintiff's complaint.

B. **Discussion of Motion to Dismiss**

Unlike the action agsint the APWU, plaintiff's suit against the Postal Service for handicap discrimination does name a proper defendant. Section 505(a)(1) of the Rehabilitation Act, 29 U.S.C. § 794a(a)(1), provides for federal court review of such discrimination claims after the complainant has exhausted the administrative remedies of Title VII.[7] **See Mackay v. United States Postal Service**, 607 F. Supp. 271, 275 (E.D. Pa. 1985).

A federal employee seeking redress against his agency must bring the discrimination claim to an EEO counselor in that agency within 30 days of the alleged transgression. 29 C.F.R. § 1613.213. If the issue is not resolved through this informal administrative procedure, the employee must file a "formal" written complaint with his agency within 15 days of the interview on the informal complaint. 29 C.F.R. § 1613.214(a)(1). The agency must provide an opportunity for "adjustment" of the complaint on an informal basis or if necessary for a formal hearing. 29 C.F.R. § 1613.217. If the agency's decision on the complaint is adverse to the claimant he may then appeal to the EEOC or proceed directly to federal court. 29 C.F.R. § 1613.281; **see Mackay, supra**, 607 F. Supp. at 275. The elaborate administrative requirements under Title VII and the Rehabilitation Act are "no mere technicality," but rather help serve the "primary goal; of these statutes, "the securing of voluntary compliance with the law." **Dickey v. Greene, supra**, 710 F.2d at 1005, **quoting Bowe v. Colgate-Palmolive Co.**, 416 F.2d 711, 719 (7th Cir. 1969). **See also Bryan v. Pittsburgh Plate Glass Co.**, 494 F.2d 799 (3rd Cir. 1974).

7/ For the text of 29 U.S.C. § 794a(a)(1), see, n.2 **supra**.

In the present case plaintiff began by following the proper administrative procedures and took his informal complaint to an EEO counselor. His formal written complaint contained new allegations or specific instances of discrimination, however, which apparently had never been brought before the counselor. Reardon did not follow through the informal procedures, but continued to press his formal complaint as high as he could in the Postal Service and the EEOC. Never at any stage has plaintiff received a review of the merits of his complaint.

Although plaintiff has pursued a lengthy appeals process through the Postal Service and the EEOC, he has not exhausted his administrative remedies. The EEOC regulations require that the complainant pursue the merits of his claim from the counselor stage through the agency before proceeding to the EEOC or federal court. 29 C.F.R. § 1613.213. The Postal Service and the EEOC did review plaintiff's complaint, but they never reached the merits. Although they approached this **pro se** case from an extremely technical posture, the fact remains that plaintiff had the opportunity for a substantive review of his complaint through the administrative process and he did not pursue it. As the court held in **Mackay, supra**, "Exhaustion of administrative relief before resorting to the courts does not require mere initiation of prescribed administrative procedures; they must be pursued to their conclusion." 607 F. Supp. at 276. The procedural mechanism is designed specifically to maximize the opportunity for voluntary compliance and development of a full factual record before the parties reach federal court. Despite the lengthy period of time taken by the EEOC to reach its narrow decision, this court had no recourse but to require plaintiff to follow the mandated administrative procedures beginning with a full disclosure to the EEOC counselor. This court lacks subject matter jurisdiction in the absence of fully completed administrative procedures and will dismiss plaintiff's complaint on that basis. The manner in which plaintiff must pursue the merits of his handicap discrimination claim against a federal agency is delineated in the EEOC regulations, 29 C.F.R. §§ 1613 **et seq**.

The court notes that the procedures which have resulted in a three-year lag between plaintiff's original complaint and this

court's opinion should not defeat his ability to pursue his proper administrative remedies. Consequently, the court wishes to make clear that equitable principles dictate that the time limitations for any of plaintiff's complaints which would have been timely as of May 17, 1983 will be tolled until 30 days after the filing date of the order accompanying this opinion. **See, e.g., Hart v. J.T. Baker Chemical Company**, 598 F.2d 829, 832, 33 (3d Cir. 1979) (Title VII's time limitation should be subject to "equitable modifications").

III. ***Reardon v. United States Postal Service, et al., Civil No. 85-5883***

Plaintiff's third action is brought against the following defendants: the Postal Service, the Merit Systems Protection Board, the Department of Labor, the APWU, the union's South Jersey Local, the Clerk Craft of the Local, Thomas Woodford, and Jerry Golden, an employee of the Local. The complaint is extremely lengthy and confusing and alleges a broad array of statutory and constitutional violations by defendants. The general circumstances concern plaintiff's employment history with the Postal Service, particularly his restoration to full-time status in November, 1982. This suit focuses specifically on alleged violations of plaintiff's rights under a collective bargaining agreement and administrative appeal procedures, but also includes certain claims raised in the other two actions. All defendants have moved to dismiss plaintiff's complaint for failure to state a claim upon which relief can be granted and the government defendants have moved in the alternative for summary judgment. The court will address the motions separately according to the appropriate group: first the union defendants and, second, the government defendants.

A. **Factual and Procedural Background**[8]

Plaintiff was originally terminated from employment with the Postal Service on January 18, 1978 due to disabilities associated with a work-related injury. Complaint at P12. The

---

[8]/ Some of the relevant facts were also discussed in the analysis of the motions in the other actions by plaintiff. **See supra**, but are included here for the sake of clarity.

Postal Service offered him reemployment on November 16, 1982 and he subsequently returned to work. **See** APWU Exhibit 1. On March 29, 1983 the APWU Local filed a grievance on plaintiff's behalf, alleging that he had not been restored to duty at the appropriate job designation and salary rate. The Postal Service reinstated Reardon at the same pay level and "step" he occupied when he was terminated but the Local argued on Reardon's behalf that he should have been reinstated at the salary level he would have occupied had he remained continuously employed from January 1978 to November 1982.

The union pursued Reardon's grievance through the Grievance Arbitration Procedure contained in Article 15 of the collective bargaining agreement between the Postal Service and the APWU (covering July 21, 1981 to July 20, 1984). APWU Exhibit 2. On September 26, 1983 the Postal Service and the APWU agreed that there was "no **national** interpretive issue" involved in Reardon's case and that the matter could be resolved at "Step 3", the regional level of the grievance procedure. APWU Exhibit 1 at 4 (emphasis added). In reviewing the merits of plaintiff's grievance on February 1, 1984, the Postal Service's Eastern Regional Labor Relations Director determined that, based on a previous decision by Arbitrator Benjamin Aaron, Reardon was not entitled to the step increase he sought. **See** APWU Exhibit 1 at 2, 6-18. Thus, the Service denied Reardon's grievance. Based on the clarity of the Arbitrator's decision, the APWU decided not to arbitrate plaintiff's grievance any further and closed the case on February 9, 1984. **Id.** at 1. The final relevant step with regard to plaintiff's employment status occurred on June 23, 1984 when he was converted from a part-time to a full-time distribution clerk at the Service. APWU Exhibit 4.

In a separate administrative route, Reardon appealed his Postal Service restoration to the MSPB on April 4, 1983. He alleged that the Postal Service "failed to notify him of his rights [upon restoration] and that the agency did not properly implement 5 U.S.C. § 8151 and 5 C.F.R. § 353 in regard to a partially recovered employee." Government Exhibit A, **Reardon v. United States Postal Service**, MSPB Decision No.

PH03538310427, August 24, 1983, at 1. The MSPB ruled that it lacked jurisdiction over the matter because plaintiff's complaint concerned an "improper restoration of duty" which is "non-appealable by partially recovered employees [such as Reardon]." **Id.** TRhe MSPB's initial decision of August 24, 1983 was upheld on appeal to the full Board on January 16, 1984. Government Exhibit B, Order of MSPB, January 16, 1984.

After a considerable time period following the events at issue, plaintiff filed this action on December 19, 1985.

B. **Motion to Dismiss by Union Defendants**

The complaint does not specifically set forth which claims apply against the APWU, the Local or the individual defendants, but a careful review of the complaint reveals that the possible causes of action are limited. For example, to the extent plaintiff seeks relief against any union defendants under the Rehabilitation Act, such a claim is barred for the same reasons the court dismissed the claim against the APWU in Civil No. 85-5881 — the union is simply an improper defendant. Furthermore, no constitutionally-based claims would be viable against these defendants due to an obvious lack of state action. The only discernible cause of action is a breach of duty of "fair representation", a duty implied by Section 301 of the National Labor Relations Act ("NLRA"), 29 U.S.C. § 185. **DelCostello v. International Brotherhood of Teamsters**, 462 U.S. 151, 164 (1983).[9]

Under the NLRA a labor organization has the duty "to serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct." **Vaca v. Sipes**, 386 U.S. 171, 177 (1967). Consequently, an employee may bring suit against his union for breach of this duty. **Id.** The only proper defendant in a fair representation case, however, is the union entity which was a party to the collective bargaining agreement under which the duty arises. Neither union local nor an individual officer who is not a signatory to the

---

[9]/ At oral argument this duty of fair representation claim was the only cause of action against the union defendants which plaintiff acknowledged.

agreement would be proper defendants. **See Teamsters Local 30 v. Helms Express, Inc.**, 591 F.2d 211, 217 (3d Cir. 1979) (upholding the dismissal of a duty of fair representation action brought against a joint union-employer committee which was not party to the collective bargaining agreement); **see also Atkinson v. Sinclair Refining Co.**, 370 U.S. 238, 247-49 (1962) (based on 29 U.S.C. § 185, the court held that liability of national union for damages does not extend to union officers and members).

Based on the above analysis, there is no question that the APWU South Jersey Local and the individual union officers are improper defendants in a duty of fair representation case, because the national APWU was the only named defendant that was a signatory to the collective bargaining agreement with the Postal Service. Although the APWU is technically a proper defendant, however, plaintiff cannot sustain this cause of action against it because the claim is time-barred by the statute of limitations.

In **DelCostello v. International Brotherhood of Teamsters, supra**, the Supreme Court held that in fair representation cases against unions or employers the applicable statute of limitations is six months from the accrual date of plaintiff's cause of action. 462 U.S. at 169-70. Even though Section 301 of the NLRA (29 U.S.C. § 185) contains no express statute of limitations, the Court analogized fair representation cases to unfair labor practice claims, which are directly governed by the six-month statute of limitations period contained in Section 10(b) of the NLRA, 29 U.S.C. § 160(b). **Id.** The Court also held, however, that the statute of limitations can be subject to the equitable tolling doctrine.

In the present case the latest action taken by APWU concerning plaintiff's grievance was February 9, 1984 when the union decided to close his case rather than arbitrate it. There is no indication of any action since then which could possibly amount to a breach of duty of fair representation. Unquestionably, then, plaintiff's action is time-barred because he did not initiate it until December 19, 1985. Furthermore, the record reveals no basis for tolling the statute of limitations period. Plaintiff merely denies that the time period is applicable to him.

See, e.g., Plaintiff's Brief in Oppoosition to Union Defendants' Motion to Dismiss at 3. This is inadequate to avoid the time bar imposed by the statute. Consequently, the court will dismiss plaintiff's complaint against the APWU and all union defendants for failure to state a claim upon which relief may be granted. Fed. R. Civ. P. 12(b)(6).

C. **Motion to Dismiss by Government Defendants**

Plaintiff asserts a wide array of claims against the government defendants, stating that: "This lawsuit comes by way of Art. VI-(2) and Art. VII of the U.S. Constitution and further by way of, but not necessarily limited to, 42 U.S.C. § 2000e, **et seq.**; 5 C.F.R. § 353, **et seq.**; and the Rehabilitation Act of 1973." Complaint at 1. Plaintiff does not delineate how defendants specifically violated his rights under any of these statutes of constitutional provisions, but the court will analyze all possible causes contained within the complaint.

The first possible cause of action involved here is one for breach of a collective bargaining agreement by the Postal Service. The claim is similar to that brought against the union and directly involves plaintiff's grievances concerning his restoration to duty in November 1982. Plaintiff has the right to sue the union under Section 301 of the NLRA, 29 U.S.C. § 185, but the statute of limitations is the same as for a suit against the union. Therefore, plaintiff's fair representation claim is time-barred. **See** Discussion of Motion by Union Defendants, **supra**.[10]

Plaintiff also alludes to claims under 42 U.S.C. § 2000e, **et seq.** (Title VII) and the Rehabilitation Act, 29 U.S.C. § 791, **et se**. These claims formed the basis for plaintiff's suit against the Postal Service in Civil No. 85-5882, however, and the court dismissed that complaint due to plaintiff's failure to exhaust his administrative remedies. **See** Discussion of Civil No. 85-5882, **supra**. For the same reason plaintiff has stated no valid claim for relief against the Postal Service under the Rehabili-

---

[10]/ The court notes in passing that plaintiff would, under no circumstances, have any fair representation claim against the MSPB or the Department of Labor. Such a claim could only be asserted against the Postal Service.

tation Act in this action. In addition, under no circumstances could plaintiff bring a Rehabilitation Act claim against the MSPB or Department of Labor — even if he had exhausted his administrative remedies. **See** 42 U.S.C. § 2000e-16; 29 U.S.C. § 794a(a)(1). The only proper defendant is the employing agency.

The next cause of action plaintiff invokes is "5 U.S.C. § 8100 **et seq.**" which the court assumes to be a reference to the Federal Employees Compensation Act ("FECA"), 5 U.S.C. § 8101 **et seq.** Plaintiff does not mention the statute by name nor does he discuss how he may be entitled to relief under the statute. He does, however, refer to a deprivation of work-related benefits which he claims he is owed. **See** Plaintiff's Brief in Opposition to Motion to Dismiss by Government Defendants at 14.

FECA invests the Secretary of Labor with "exclusive authority to administer the statute, including deciding questions relating to a federal employee's work-related injury benefits. 5 U.S.C. §§ 8116, 8128. The Third Circuit has held explicitly that where there exists a substantial question of FECA coverage, "the federal courts will not entertain a claim." **Heilman v. United States**, 731 F.2d 1104, 1110 (3d Cir. 1984).

Plaintiff's reference to FECA is minimal at best but it is the only possible statutory cause of action concerning a denial of injury benefits. The court must defer to the Secretary of Labor on such questions, however, and finds that plaintiff has stated no direct claim for relief with regard to benefit payments.

Plaintiff also appeals through this suit the MSPB decision of January 16, 1984 which dismissed for want of jurisdiction plaintiff's challenge to his restoration. There are several problems with such an appeal, however. First, under 5 U.S.C. § 7703(b)(1), the Court of Appeals for the Federal Circuit has exclusive jurisdiction to review all MSPB decisions which are not "cases of discrimination" included within 5 U.S.C. § 7702. Such "discrimination" cases may be brought to District Court pursuant to 42 U.S.C. § 2000e-16(c). 5 U.S.C. § 7703(b)(2). A suit generally considered a "discrimination" case, however, will nonetheless remain within the exclusive jurisdiction of the Federal Circuit if the MSPB made no more than a jurisdictionally based decision. **Ballentine v. Merit Systems Pro-**

tection Board, 738 F.2d 1244, 1248 (3d Cir. 1984). Under any circumstances, a petition to review an MSPB decision must be filed within 30 days after the date the petitioner received notice of the board's final decision — whether or not it is a "discrimination" case. 5 U.S.C. § 7703(b), (1)(2).

It is extremely doubtful that the present case can be classified as a "discrimination" matter under 5 U.S.C. § 7702 because the MSPB's decision hinged solely on a lack of jurisdiction, not the merits of any discrimination claim. Thus, the Federal Circuit should have exclusive authority to decide whether in fact the MSPB had proper jurisdiction. Whether or not plaintiff's appeal is considered a "discrimination" case, however, this court still lacks jurisdiction because plaintiff filed his case considerably later than 30 days after he received notification of the Board's final decision of January 16, 1984. Consequently, plaintiff cannot appeal that decision to this court.

The court must next address plaintiff's contention that the government defendants violated his constitutional rights. Plaintiff mentions Articles VI and VII of the Constitution, but these provisions are entirely inappropriate to this action.[11]

---

[11]/ Article VI reads:

[1] All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

[2] This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

[3] The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several states, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

Article VII reads:

The Ratification of the Conventions of nine States shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

Reardon identifies no other rights under the Constitution which might have been violated. Stretching his case to the limits the court perceives a possible allegation of due process denial, but the complaint is clearly insufficient to support such a claim. Plaintiff has pursued the administrative remedies available to him through the Grievance-Arbitration Procedure contained within the APWU-Postal Service Collective Bargaining Agreement, and the MSPB. He also has additional remedies available through the EEOC. That some of his appeals are now time-barred does not alter the fact that he has had and continues to have elaborate administrative mechanisms at his disposal through which to seek redress of his claims. Even if plaintiff had identified any protectable liberty or property interest (which he has not), he has alleged no deviation from the standard administrative procedures available to him. This network of administrative remedies is plainly sufficient to satisfy plaintiff's due process rights. In sum, plaintiff has failed to state any claim for relief based on a deprivation of constitutional rights.

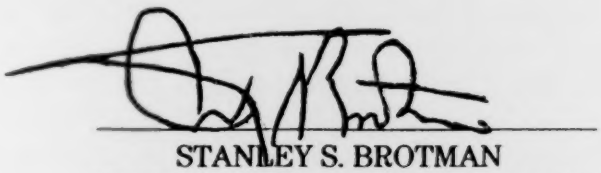
Plaintiff also refers to three causes of action under the Code of Federal Regulations: 5 C.F.R. § 302 **et seq.**; 5 C.F.R. § 330 **et seq.**; and 5 C.F.R. § 353 **et seq.** None of these Code sections provide the basis for a separate cause of action in this case, however. Plaintiff must do more than merely identify Code provisions if he wishes to file a court action, and he has not done so with regard to these provisions.

D. **Conclusion**

In sum, after a careful and thorough review of the complaint, the court now concludes that it is "beyond doubt that plaintiff can prove no set of facts" which would entitle him to relief. **Conley v. Gibson,** 355 U.S. 41, 44-45 (1958); **Bryson v. Brands Insulations, Inc.,** 621 F.2d 556, 559 (3d Cir. 1980); Fed. R. Civ. P. 12(b)(6). Consequently, the court will dismiss the complaint in Civil No. 85-5883 as to all defendants, just as it has dismissed the complaints in plaintiff's other actions.

As a result of this dismissal and those in other actions, plaintiff's motion for class certification is rendered moot.

The court will enter an appropriate order.



STANLEY S. BROTMAN
UNITED STATES DISTRICT COURT

Dated: September 3, 1986

UNITED STATES DISTRICT COURT
District of New Jersey
United States Court House
Camden, New Jersey 08108-0588

Chambers of
JOHN F. GERRY
Judge

October 21, 1986

Mr. John E. Reardon
8 Winding Way
Gibbsboro, New Jersey 08026

Sidney H. Lehmann, Esquire
Kirschner, Walters & Willig
194 South Broad Street
Trenton, New Jersey 08608

Susan L. Catler, Esquire
O'Donnell, Schwartz & Anderson
1400 Eye Street, N.W.
Suite 200
Washington, D. C. 20005

Paul A. Blaine, Esquire
Assistant U. S. Attorney
402 East State Street, Room 265
Trenton, New Jersey 08608

LETTER OPINION

Bruce Joel Jacobsohn, Esquire
Office of Labor Law
U. S. Postal Service
1845 Walnut Street, Room 907
P. O. Box 8601
Philadelphia, Pennsylvania 19197

Re: John E. Reardon v. American Postal Workers Union
Civil No. 85-5881

John E. Reardon v. United States Postal Service
Civil No. 85-5882

John E. Reardon v. U. S. Postal Service, et al
Civil No. 85-5883

Dear Litigants:

Plaintiff brought these three pro-se actions alleging constitutional and statutory violations by defendants during the cours of plaintiff's employment with the United States Postal Service. By opinion and order dated September 3, 1986, the cases were dismissed by the Honorable Stanley S. Brotman, U.S.D.J. Plaintiff filed a motion for reconsideration and filed a lawsuit against Judge Brotman. Because of the pending suit, Judge Brotman recused himself from these cases, and they have been transferred to us.

In a motion for reconsideration, the court's role is limited to determining whether there are factual matters or controlling decisions which were overlooked by teh court in its original decision. **See** Rule 12I, General Rules of the united States District Court for the District of New Jersey. We have carefully examined Judge Brotman's oritginal, detailed September 3 motion and conclude that no new matters have been presented. Accordingly, reconsideration is inappropriate, and plaintiff's motion will be denied. The accompanying order will be entered.

Very truly yours,

John F. Gerry, U.S.D.J.

JFG/jem
Enclosure

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JOHN E. REARDON Plaintiff, v. AMERICAN POSTAL WORKERS UNION, Defendant.	:	Civil No. 85-5881
JOHN E. REARDON, Plaintiff, v. UNITED STATES POSTAL SERVICE, Defendant.	:	Civil No. 85-5882
JOHN E. REARDON, Plaintiff, v. U.S. POSTAL SERVICE, et al, Defendants.	:	Civil No. 85-5883

ORDER

Plaintiff having filed a motion for consideration of an order entered by the Honorable Stanley S. Brotman on September 3, 1986, in these matters, and the court having considered the submissions of the parties, and for good cause shown;

It is, this 21st day of October, 1986, hereby ORDERED that the motion is denied.

JOHN F. GERRY, U.S.D.J.